

10/638,172

RECEIVED
CENTRAL FAX CENTER
SEP 22 2006

REMARKS

Claims 1-18 are pending. Claims 1, 2, 5-7, 10 and 13-15 are under examination.

As requested by the Examiner, the first paragraph of the specification has been amended to update the priority claim.

The rejection of claims 1, 5-7, 10, 13 and 15 under 35 U.S.C. § 102(e) as allegedly anticipated by Dasch et al., U.S. Patent No. 5,772,998, is respectfully traversed. Applicants respectfully maintain, for the reasons of record, that the Examiner has not met the burden of providing a basis in fact to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the Dasch et al. reference. Accordingly, Applicants respectfully request removal of the rejection of claims 1, 5-7, 10, 13 and 15 under 35 U.S.C. §102(e) as allegedly anticipated by Dasch et al.

Applicants acknowledge and defer responding to the provisional rejection of claims 1, 2, 5-7, 10, and 13-15 under the judicially created doctrine of obviousness-type double patenting over co-pending application Serial No. 08/349,479.

In light of the remarks herein, Applicants submit that the claims are now in condition for allowance and respectfully request a notice to this effect. The Examiner is invited to call the undersigned agent if there are any questions.

10/638,172

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 502624 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP


Deborah L. Cadena
Registration No. 44,048

4370 La Jolla Village Drive, Suite 700
San Diego, CA 92122
Phone: 858.535.9001 DLC:llf
Facsimile: 858.597.1585
Date: September 22, 2006

**Please recognize our Customer No. 41552
as our correspondence address.**